

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re. Appln: John Underbrink, et al
Serial No.: 10/652,112
Filed: August 29, 2003
For: FOLDING SINK
Confirmation No.: 1842
Art Unit: 3751
Examining Atty: Khoa D. Huynh
Attorney: Gerald E. Helget
Attorney Docket No.: 35249.26
Additional Fees: Charge to Deposit Account 02-3732

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICANT'S AMENDED APPEAL BRIEF

Applicant, by his attorney, submits one copy of this Amended Appeal Brief, pursuant to the Office Action mailed October 29, 2004 and 37 C.F.R. § 1.192 and §41.37(a) in further of the Appeal, the notice of which was filed with the United States Patent and Trademark Office on January 20, 2005, and further in response to the Notice of Non-Compliant Appeal Brief mailed June 17, 2005 and Communication Regarding Appeal dated August 23, 2005.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

By *Gerald E. Helget*
Date 9/8/05

I. REAL PARTY IN INTEREST

The real party in interest is Today's Gear, Inc., the assignee.

II. RELATED APPEALS AND INTERFERENCES

An appeal has been filed in related U.S. Patent Serial Number 10/652,111.

III. STATUS OF CLAIMS

The claims on appeal are claims 1-20.

IV. STATUS OF AMENDMENTS

An amendment was attempted to be made on December 13, 2004 but was disallowed by the Examiner.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is: a sink (100, page 5) comprising a basin (102, page 5) and a faucet assembly (108, page 6) comprising a discharge neck (112, page 6) coupled to a faucet housing (116, page 6), the faucet housing movably supported on the basin and selectively rotatable between an upright position (Fig. 1) wherein at least a portion of the discharge neck protrudes from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position (Fig. 5) wherein the faucet assembly is received within the basin for storage.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-3, 5, 9-14, 16 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Polakoff et.al (U.S. Patent No. 449,430) (herein after "Polakoff"). This rejection is respectfully traversed and Applicant respectfully submits that the Final Office Action has made an improper prima facie showing of anticipation because Polakoff does not disclose claims 1-3, 5, 9-14, 16 and 17, respectively.

VIII. ARGUMENT

A. The Applicable Law under 35 U.S.C. §102(b)

A single prior art reference anticipates a claimed invention only if it discloses each and every claim element. *Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984).

B. Claim 1 is not anticipated by Polakoff.

Polakoff does not disclose: "a faucet assembly comprising a discharge neck coupled to a faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage."

As claimed, the "faucet assembly" is the "discharge neck coupled to the faucet housing." Furthermore, the faucet housing must be "movably supported on the basin." In addition, the faucet assembly "must be received within the basin for storage."

As seen in Figs. 4 and 5 of Polakoff, the faucet assembly F, H, H' is not supported on the basin d, but above the basin D on the horizontal partition b. As seen in Fig. 6, the faucet assembly F, H, H' is not received within the basin D (part F and most of H remain above the basin). Claim 1 is therefore allowable.

C. Claim 2 is not anticipated by Polakoff.

Polakoff does not disclose a "faucet assembly" which "includes a flow control valve." Therefore, claim 2 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 2 is therefore allowable.

D. Claim 3 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "has a top portion which defines a plane and wherein the faucet assembly is located completely below the plane when in the folded position."

Specifically as to claim 3, it is quite clear that the faucet assembly of Polakoff is not located completely below the plane of the basin's top portion when in a folded position (see Fig. 6).

Therefore, claim 3 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 3 is therefore allowable.

E. Claim 5 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "further comprises a retainer that releasably retains the faucet assembly in the folded position." Therefore, claim 5 contains additional elements or limitations beyond allowable claim 1 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 5 is therefore allowable.

F. Claim 9 is not anticipated by Polakoff

As to claim 9, Polakoff does not show the faucet housing attached to the basin, but above the basin as previously discussed. Claim 9 is therefore allowable.

G. Claim 10 is not anticipated by Polakoff

Claim 10 of the present invention discloses a drain. Polakoff does not disclose a drain, rather a waste-water receptacle. Therefore, claim 10 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 1. Claim 10 is therefore allowable.

H. Claim 11 is not anticipated by Polakoff

Polakoff does not disclose a "basin" that "further comprises a retainer that releasably retains the faucet assembly in the folded position." Therefore, claim 11 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 11 is therefore allowable.

I. Claim 12 is not anticipated by Polakoff

Polakoff does not disclose a "retainer" which "comprises one or more detents on the faucet housing." Polakoff does not disclose a retainer or detents in any regard. Therefore, claim 12 contains additional elements or limitations beyond allowable claim 11 and is separately patentable and therefore does not stand or fall together with claim 11. Claim 12 is therefore allowable.

J. Claim 13 is not anticipated by Polakoff

Polakoff does not disclose "a flow control valve supporting in the faucet housing." Therefore, claim 13 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 13 is therefore allowable.

K. Claim 14 is not anticipated by Polakoff

Polakoff does not disclose "a flow control valve" which "comprises a connector for receiving the discharge neck." Therefore, claim 14 contains additional elements or limitations beyond allowable claim 13 and is separately patentable and therefore does not stand or fall together with claim 13. Claim 14 is therefore allowable.

L. Claim 16 is not anticipated by Polakoff

Polakoff does not disclose a "conduit for supplying liquid to the faucet housing." Further, Polakoff does not show the conduit (124) in claim 16, as illustrated in Figs. 3b and 3c. Therefore, claim 16 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 16 is therefore allowable.

M. Claim 17 is not anticipated by Polakoff

Specifically as to claim 17, it is quite clear that the faucet assembly of Polakoff is not located completely below the plane of the basin's top surface when in a folded position (see Fig. 6). Claim 17 contains additional elements or limitations beyond allowable claim 9 and is separately patentable and therefore does not stand or fall together with claim 9. Claim 17 is therefore allowable.

VIII. SUMMARY

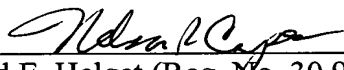
For the reasons argued above, claims 1-3, 5, 9-14, 16 and 17 were not properly rejected under §102(b) as being anticipated by Polakoff.

Appellant respectfully submits that the art cited does not render the claim anticipated and the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,
JOHN UNDERBRINK
PETER HILL

By their representatives,

Dated: 9/8/05

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CLAIMS APPENDIX

IN THE CLAIMS:

1. (rejected) A sink comprising:
a basin; and
a faucet assembly comprising a discharge neck coupled to a faucet housing, the faucet housing movably supported on the basin and selectively rotatable between an upright position wherein at least a portion of the discharge neck protrudes out from the basin such that in operation the discharge neck discharges a stream of water receivable in the basin, and a folded position wherein the faucet assembly is received within the basin for storage.
2. (rejected) The sink of claim 1, wherein the faucet assembly includes a flow control valve.
3. (rejected) The sink of claim 1, wherein the basin has a top portion which defines a plane and wherein the faucet assembly is located completely below the plane when in the folded position.
4. (objected to) The sink of claim 1, wherein the faucet housing includes a pivot detent that is in contact engagement with an interior surface of the basin when the faucet assembly is in the upright position.
5. (rejected) The sink of claim 1, wherein the basin further comprises a retainer that releasably retains the faucet assembly in the folded position.
6. (canceled)
7. (canceled)
8. (canceled)

9. (rejected) A sink comprising:
a basin;
a faucet assembly attached to the basin, the faucet assembly including:
a discharge neck.,
a handle for controlling liquid flow through the discharge neck, and
a faucet housing supporting the discharge neck on the basin; and
a mounting means for pivotally coupling the faucet housing to the basin such that
the faucet assembly may be pivoted through an angle of approximately ninety degrees
about a horizontal axis defined by the mounting means.
10. (rejected) The sink of claim 9, wherein the basin includes a drain.
11. (rejected) The sink of claim 9, wherein the basin includes a retainer for releasably
retaining the faucet assembly in the folded position.
12. (rejected) The sink of claim 11, wherein the retainer comprises one or more
detents on the faucet housing.
13. (rejected) The sink of claim 9, further comprising a flow control valve supported
in the faucet housing.
14. (rejected) The sink of claim 13, wherein the flow control valve comprises a
connector for receiving the discharge neck.
15. (objected to) The sink of claim 14, wherein the connector allows the discharge
neck to rotate about a vertical axis.
16. (rejected) The sink of claim 9, further comprising a conduit for supplying liquid
to the faucet housing.

17. (rejected) The sink of claim 9, wherein the faucet assembly may be pivoted between an upright position in which at least a portion of the discharge neck protrudes from the basin and a folded position in which the faucet assembly is below a plane defined by a top surface of the basin.

18. (objected to) The sink of claim 9, wherein the mounting means comprises a bushing received within an enclosure in the basin.

19. (objected to) The sink of claim 9, wherein the mounting means comprises a peg received within an enclosure in the basin.

20. (objected to) The sink of claim 19, wherein the peg is retained within the enclosure by a spring.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,112	08/23/2005	John Underbrink	001148CON	1842

32300 7590 08/23/2005

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 08/23/2005

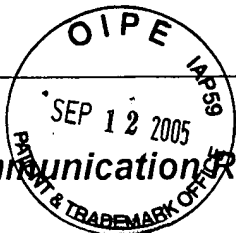
Please find below and/or attached an Office communication concerning this application or proceeding.

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AUG 26 2005

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Communication Re: Appeal



Application No.

10/652,112

Examiner

Khoa D. Huynh

Applicant(s)

UNDERBRINK ET AL.

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: failure to comply with the Notification of Non-Compliant Appeal Brief and to file a complete new brief in compliance with 37 CFR 41.37.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

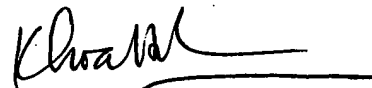
Art Unit: 3751

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
08/22/2005